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MILBERG LLP

JEFF S. WESTERMAN (SBN 94559)
Email: jwesterman@milberg.com
NICOLE M. DUCKETT (SBN 198168)
Email: nduckett@milberg.com
One California Plaza
300 South Grand Ave., Suite 3900
Los Angeles, CA 90071
Telephone: (213) 617-1200
Facsimile: (213) 617-1975

MILBERG LLP

JANINE L. POLLACK
Email: jpollack@milberg.com
One Pennsylvania Plaza, 49th Floor
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

Counsel for Plaintiff Ali Safavi

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALI SAFAVI, on Behalf of Himself, All
Others Similarly Situated and the General
Public,

Plaintiff,

v.

VIBRAM USA INC. and VIBRAM
FIVEFINGERS LLC,

Defendants.

Case No. **CV12-5900** - RSW
CLASS ACTION (JCGx)

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR
COMPETITION LAW,
BUSINESS AND PROFESSIONS
CODE §17200 *ET SEQ.*;
2. VIOLATIONS OF CONSUMERS
LEGAL REMEDIES ACT, CIVIL
CODE §1750 *ET SEQ.*; AND
3. BREACH OF EXPRESS
WARRANTY

DEMAND FOR JURY TRIAL

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1 Plaintiff Ali Safavi ("Plaintiff"), on behalf of himself and all others similarly
 2 situated, hereby submits the following Amended Class Action Complaint
 3 ("Amended Complaint") against Vibram USA Inc. and Vibram FiveFingers LLC
 4 ("Defendants") and upon personal knowledge as to his own acts and status, and
 5 upon information and belief, the investigation of his counsel, and the facts that are
 6 a matter of public record, as to all other matters, alleges as follows:

7 NATURE OF THE ACTION

8 1. Defendants design, manufacture, market, distribute and sell shoes for
 9 men, women, and children called Vibram FiveFingers ("FiveFingers").

10 2. Through an extensive, comprehensive, and uniform nationwide
 11 marketing campaign, Defendants claim implicitly and explicitly that scientific
 12 research shows that their expensive FiveFingers (ranging from approximately \$80-
 13 \$125 per pair) will provide certain "health benefits" that traditional running shoes
 14 do not provide. Such representations are false and misleading.

15 3. FiveFingers are among the so-called "minimalist" shoes intended to
 16 mimic "barefoot running," which is a form of running that has recently increased
 17 in popularity. Defendants have claimed that wearing FiveFingers, *inter alia*,
 18 improves posture and foot health, reduces risk of injury, strengthens muscles in
 19 feet and lower legs, and promotes spine alignment. Defendants have used these
 20 claims to charge prices for FiveFingers that consumers readily paid, believing
 21 FiveFingers would confer upon them significant advertised health benefits.
 22 Unbeknownst to consumers, Defendants' health benefit claims are false and
 23 deceptive because FiveFingers are not proven to provide any of the health benefits
 24 beyond what conventional running shoes provide. In fact, there are no well-
 25 designed scientific studies that support Defendants' health benefits claims
 26 regarding FiveFingers. Indeed, running in FiveFingers may increase injury risk as
 27 compared to running in conventional running shoes, and even when compared to
 28 barefoot running.

1 4. The American Podiatric Medical Association's position on barefoot
2 running, which FiveFingers are intended to mimic, demonstrates how Defendants'
3 uniform statements are false and deceptive. That position is as follows:

4 While anecdotal evidence and testimonials proliferate on the Internet
5 and in the media about the possible health benefits of barefoot
6 running, *research has not yet adequately shed light on the immediate*
7 *and long term effects of this practice.*

8 Barefoot running has been touted as improving strength and balance,
9 while promoting a more natural running style. However, risks of
10 barefoot running include a lack of protection--which may lead to
11 injuries such as puncture wounds--and increased stress on the lower
12 extremities.¹

13 5. With conventional running shoes, the runner runs with a heel-strike
14 manner. But with FiveFingers, a runner must run with a forefoot strike pattern.
15 This process, necessary with FiveFingers, can be long and painful, and can even
16 lead to injuries. As indicated in a recent study by the University of Wisconsin—La
17 Crosse and published by the American Council On Exercise (the "ACE Study"),
18 "If you want to run in Vibrams, you should be prepared to change your gait
19 pattern If you run in them, give yourself time to acclimate to them and
20 adapt."² Notably, some people may never change their gait.

21 6. A consumer would only purchase FiveFingers, which requires that
22 consumer to change his/her gait while running and may involve a long, painful,

23
24 ¹ APMA Position Statement on Barefoot Running,
25 [http://www.apma.org/MainMenu/](http://www.apma.org/MainMenu/News/MediaRoom/PositionStatements/Barefoot-Running.aspx)
26 [News/MediaRoom/PositionStatements/Barefoot-Running.aspx](http://www.apma.org/MainMenu/News/MediaRoom/PositionStatements/Barefoot-Running.aspx) (emphasis added)
27 (last visited Mar. 9, 2012).

28 ² Caitlin McCarthy, M.S., *et. al.*, *Like Barefoot, Only Better?* ACE Certified News
(Sept. 9, 2011), *available at*
<https://www.acefitness.org/certifiednews/images/article/pdfs/ACEVibramStudy.pdf>
f (last visited Mar. 2, 2012).

1 and injury fraught regimen, in reliance on Defendants' uniform deceptive health
2 benefit claims.

3 7. Defendants' false and misleading advertising campaign has allowed
4 them to reap millions of dollars of profit at the expense of the consumers they have
5 misled. According to "brand experts" Tomlinson LLC, which, in 2006, "was
6 asked to help create the brand look and feel for Vibram FiveFingers[,] . . . [s]ales
7 have grown an average of 300% a year for the past 5 years sales are approaching
8 70 million in 2011."³ Defendants conveyed and continue to convey their deceptive
9 claims about FiveFingers in a variety of ways that repeat and reinforce the
10 deceptive message, including at the point of sale, with in-store displays, with
11 packaging that typically includes booklets and hang tags, and on the Internet.

12 8. As a result of Defendants' false and deceptive claims, consumers—
13 including Plaintiff and the other members of the proposed Class—have purchased
14 a product that has not been proven to perform as advertised. This action seeks to
15 obtain redress for purchasers of FiveFingers, and to enjoin Defendants' deceptive
16 and unlawful advertising. Plaintiff brings this lawsuit against Defendants on behalf
17 of himself, and other similarly situated purchasers of FiveFingers in California,
18 alleging claims for breach of express warranty and violations of the Business &
19 Professions Code §17200, *et seq.* and the Consumers Legal Remedies Act—Civil
20 Code §1750 *et seq.*

21 JURISDICTION AND VENUE

22 9. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which some of the members of the class of
25 plaintiffs, whose number exceeds 100, are citizens of states different from
26

27 ³ Tomlinson LLC, *Vibram FiveFingers Brand Image Development*,
28 <http://www.tomlinson-llc.com/casestudy/vibram-fivefingers/> (last visited Mar. 9,
2012).

1 Defendants. Further, greater than two-thirds of the class members reside in states
2 other than the state in which Defendants are citizens.

3 10. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that
4 many of the acts and transactions giving rise to this action occurred in this District
5 and because Defendants:

6 (a) have intentionally availed themselves of the laws and markets
7 within this District through the promotion, marketing, distribution and sale of their
8 products in this District;

9 (b) do substantial business in this District; and

10 (c) are subject to personal jurisdiction in this District.

11 PARTIES

12 11. Plaintiff is a resident of the state of California, in the County of Los
13 Angeles, and was exposed to Defendants' deceptive and misleading statements
14 while reading a magazine relating to fitness, through Defendants' website, and
15 from Defendants' in-store display regarding the "5 Reasons to Wear or Train in
16 Vibram FiveFingers." In reliance on these deceptive and misleading health benefit
17 claims about FiveFingers, Plaintiff purchased a pair of FiveFingers (Vibram KSOs)
18 in July 2011 from REI in Santa Monica, California, for which he paid \$92.86. Had
19 Plaintiff known the truth about Defendants' representations, he would not have
20 purchased the FiveFingers.

21 12. Defendant Vibram USA Inc. is a corporation organized and existing
22 under the laws of the State of Delaware, with its principal place of business at 9
23 Damonmill Square, Suite H3, Concord, MA 01742. Vibram USA Inc., thus, is a
24 citizen of Massachusetts and Delaware. Vibram USA Inc. is a wholly-owned
25 subsidiary of Vibram S.p.A., which is a joint stock company organized and
26 existing under the laws of Italy.

27 13. Defendant Vibram FiveFingers LLC is a domestic limited liability
28 company organized and existing under the laws of the Commonwealth of

1 Massachusetts, with its principal place of business at Damonmill Square, Suite H3,
2 Concord, MA 01742.

3 14. Defendants market and sell FiveFingers to consumers through
4 authorized retailers and through their website throughout the United States,
5 including in Florida. Based upon information and belief, Defendants provide the
6 FiveFingers' deceptive advertising and marketing materials to their authorized
7 retailers and approve or instruct FiveFingers' authorized retailers as to how to
8 advertise and/or market FiveFingers.

9 15. Plaintiff is informed and believes, and thus alleges, that at all times
10 herein, Defendants' agents, employees, representatives, and/or partners, were
11 acting within the course and scope of such agency, employment, and
12 representation, on behalf of Defendants.

13 **SUBSTANTIVE ALLEGATIONS**

14 **Defendants' So-Called Minimalist Shoes**

15 16. Defendants launched FiveFingers in the U.S. in or about April 2006.

16 17. Running in FiveFingers is intended to mimic running barefoot.
17 FiveFingers are "thin, flexible soles that are contoured to the shape of the human
18 foot, including visible individual sections for the toes."⁴ According to Defendants'
19 website, with FiveFingers, "you get all the health benefits of barefoot running
20 combined with our patented Vibram® sole."⁵

21 18. The following pictures are representative of the FiveFingers that are
22 offered to consumers, which are all marketed to provide the same "health
23 benefits":
24

25
26 ⁴ Wikipedia, http://en.wikipedia.org/wiki/Vibram_FiveFingers (last visited Mar. 9, 2012).

27 ⁵ Vibram, http://www.vibramfivefingers.com/barefoot-sports/barefoot_running.htm
28 (last visited Mar. 9, 2012).

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BIKILA



SPRINT



FLOW



KSO



TREK SPORT



KSO TREK



KOMODO SPORT LS



BIKILA LS



KOMODO SPORT



BIKILA



SPRINT



FLOW



KSO



TREK SPORT



KSO TREK



KOMODO SPORT

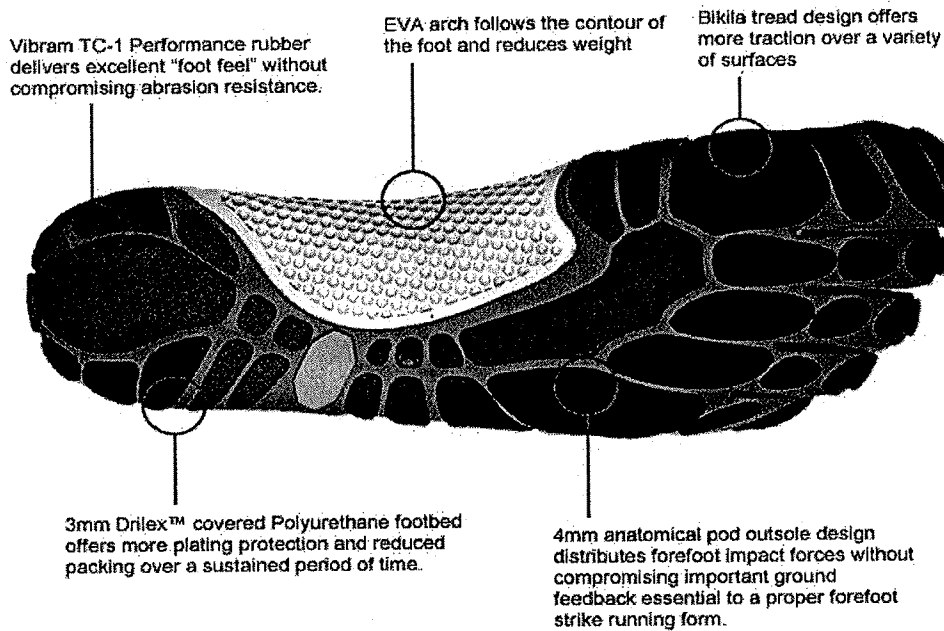


BIKILA LS



KOMODO SPORT LS

19. Defendants use the following image to illustrate the design of one the FiveFingers:



The Deceptive Marketing Campaign

20. Upon information and belief, since Defendants began selling FiveFingers in the U.S. in or around April 2006, they have made uniform representations that FiveFingers provide numerous "health benefits" that conventional running shoes do not provide. Although there is no reliable scientific proof demonstrating FiveFingers actually provide those health benefits, Defendants' marketing and advertising conveys that there is such reliable scientific proof.

21. Defendants' deceptive acts are intended to induce consumers to purchase FiveFingers.

22. Since April 2006, Defendants have heavily promoted FiveFingers through a fully-integrated advertising campaign, which is designed to repeat and reinforce the deceptive health benefit claims, including through: 1) point of sale promotions (in-store displays and salespersons in stores); 2) hang tags and

1 brochures accompanying FiveFingers; and 3) various types of additional
 2 advertisements, including, inter alia, Internet advertising and marketing, such as
 3 statements on their www.vibramfivefingers.com website, postings on the video
 4 sharing website youtube.com, Defendants' facebook.com webpage, and
 5 advertisements on Internet search engines including Google. FiveFingers have
 6 been featured in *The Wall Street Journal*, *Runner's World*, *Running Times*, *Trail*
 7 *Runner*, the *New York Times*, *Her Sports*, *Men's Health*, *Health & Fitness*,
 8 *Women's Health*, the *Los Angeles Times*, and the *Today Show*.⁶

9 23. Defendants' uniform, deceptive claims regarding FiveFingers are
 10 repeated and reinforced to such an extent (for example, on in-store displays at
 11 points of sale, in FiveFingers' packaging, and on Defendants' websites) that
 12 anyone purchasing the shoes would necessarily be exposed to them.

13 24. Defendants' in-store displays state as follows:

14 **5 Reasons to Wear or Train in Vibram FiveFingers**

- 15 1. Strengthens Muscles in Feet and Lower Legs
 16 2. Improves Range of Motion in Ankles, Feet and Toes
 17 3. Stimulates Neural Function. Important to Balance and Agility
 18 4. Eliminates Heel Lift to Align the Spine and Improve Posture
 19 5. Allows the Foot and Body to Move Naturally, Which Just Feels
 20 Good
 21

22 These in-store displays necessarily give the impression to reasonable consumers
 23 that there is scientific evidence supporting the specific health-benefit
 24 representations.

25 25. Defendants' uniform deceptive "health benefits" claims are also on
 26 the hang tags attached to FiveFingers. For example, Defendants state:

27 _____
 28 ⁶ Tomlinson LLC, *supra* note 3, *Vibram Fivefingers Brand Image Development*.

1 *Unlike any running shoe on the market today, the Vibram*
 2 *FiveFingers Bikila® is a breakthrough product that encourages a*
 3 *more natural, healthier and efficient forfoot [sic] strike.* Built on an
 4 entirely new platform, the Bikila features a Dri-Lex covered 3mm
 5 polyurethane insole (thickest under the ball) and a 4mm anatomical
 6 pod outsole design that offers plating production and distributes
 7 forefoot impact without compromising important ground [sic]
 8 feedback. (Emphasis added).

9 26. Defendants make similarly deceptive claims in a brochure included
 10 with FiveFingers, such as the following claim:

11 The benefits of running barefoot have long been supported by
 12 scientific research, coaches, and athletes who believe that a gradual
 13 system of training barefoot will strengthen muscles in the feet and
 14 lower legs, leading to better running form and improved injury
 15 resistance. However, running completely barefoot also exposes you
 16 to elements and obstacles that can cause injury. Running in
 17 FiveFingers enables you to reap the rewards of running barefoot while
 18 reducing those risks. To learn more about running barefoot in Vibram
 19 FiveFingers, please visit www.vibramfivefingers.com.

20 27. Consumers are also exposed to Defendants' uniformly deceptive
 21 claims on the Internet. As Tony Post, CEO of Vibram USA Inc., stated: "we've
 22 really grown this consumer franchise on the web, the web has been instrumental in
 23 how we've spread the word."⁷ Even the hang tag attached to FiveFingers refers
 24 consumers to Defendants' website. Defendants' website had 5,806,936 page views
 25 in one month alone.⁸

26 ⁷ Vibramfivefingers, *The Making of Vibram FiveFingers*, "You are the
 27 Technology" Microsite, YouTube (Jan. 16, 2011)
<http://www.youtube.com/watch?v=eFwgupPvzdg> (last visited on Mar. 9, 2012).

28 ⁸ Tomlinson LLC, *supra* note 3, *Vibram Fivefingers Brand Image Development*.

1 28. Defendants' website is replete with uniform deceptive statements
2 about the health benefits that FiveFingers purportedly provide. For example,
3 Defendants prominently state the following on their website:

4 Vibram FiveFingers® footwear is different than any other footwear on
5 the planet. Not only does it bring you closer to your environment, it
6 also delivers a number of positive health benefits—by leveraging all
7 of the body's natural biomechanics, so you can move as nature
8 intended.

9 **5 Reasons to Wear Vibram FiveFingers:**

- 10 1. **Strengthens Muscles in the Feet and Lower Legs**—Wearing
11 Vibram FiveFingers will stimulate and strengthen muscles in the feet
12 and lower legs, improving general foot health and reducing the risk of
13 injury.
- 14 2. **Improves Range of Motion in Ankles, Feet and Toes**—No
15 longer 'cast' in a shoe, the foot and toes move more naturally.
- 16 3. **Stimulates Neural Function Important to Balance and**
17 **Agility**—When wearing Vibram FiveFingers, thousands of
18 neurological receptors in the feet send valuable information to the
19 brain, improving balance and agility.
- 20 4. **Eliminate Heel Lift to Align the Spine and Improve**
21 **Posture**—By lowering the heel, your bodyweight becomes evenly
22 distributed across the footbed, promoting proper posture and spinal
23 alignment.
- 24 5. **Allow the Foot and Body to Move Naturally**—Which just
25 FEELS GOOD.
- 26
27
28

1 *For those interested in running in Vibram FiveFingers, please go to
2 our Barefoot Running page for further information.*⁹

3 29. Defendants' postings on their Facebook webpage repeat similar
4 deceptive statements. For example, Defendants make the following
5 representation:¹⁰

6 Here at Vibram we feel there are five main reasons to wear or train in
7 FiveFingers.

- 8 1. Strengthens Muscles in the feet and lower legs. This improves foot
- 9 health and reduces the risk of injury.
- 10 2. Improves range of motion in ankles and feet.
- 11 3. Stimulates neural function improving balance and agility.
- 12 4. Eliminates heel lift to align spine and improve posture.
- 13 5. Allows the body to move naturally, which FEELS GREAT!

14 30. On prior versions of www.vibramfivefingers.com, Defendants
15 represented that there were six reasons to wear FiveFingers.¹¹ For example, in
16 August 2010, Defendants represented as follows:

17 Vibram FiveFingers is different than any other footwear on the planet.
18 Not only do they bring you closer to your environment, FiveFingers
19 deliver a number of positive health benefits—by leveraging all of the
20 body's natural biomechanics, so you can move as nature intended.

23 ⁹ Vibram,
24 http://www.vibramfivefingers.com/about_vibram_fivefingers/health_wellness.htm
25 (last visited Mar. 9, 2012).

26 ¹⁰ Facebook, <http://www.Facebook.com/VibramFiveFingers> (click on "About"
27 link) (last visited June 11, 2012).

28 ¹¹ Way Back Machine,
29 [http://web.archive.org/web/20100817003233/http://www.vibramfivefingers.com/](http://web.archive.org/web/20100817003233/http://www.vibramfivefingers.com/technology/health_wellness.cfm)
30 technology/health_wellness.cfm (last visited Mar. 9, 2012).

6 Reasons to Wear Vibram FiveFingers:

1. **Strengthens Muscles in the Feet and Lower Legs**—wearing FiveFingers will stimulate and strengthen muscles in the feet and lower legs, improving general foot health and reducing the risk of injury.
2. **Improves Range of Motion in Ankles, Feet and Toes**—no longer ‘cast’ in a shoe, the foot and toes move more naturally.
3. **Stimulates Neural Function Important to Balance and Agility**—when wearing Vibram FiveFingers, thousands of neurological receptors in the feet send valuable information to the brain, improving balance and agility.
4. **Improves Proprioception and Body Awareness**—those same neurological receptors heighten body awareness, sending messages about body mechanics, form, and movement.
5. **Eliminates Heel Lift to Align the Spine and Improve Posture**—by lowering the heel, our bodyweight becomes evenly distributed across the footbed, promoting proper posture and spine alignment.
6. **Allows the Foot and Body to Move Naturally, Which Just FEELS GOOD.**

31. On yet another one of Defendants’ websites, <http://www.youarethetechnology.com/>, which features a woman and man with representations about FiveFingers written on their naked bodies, Defendants deceptively state, among other things, that FiveFingers “makes your legs and feet stronger.”

32. Similarly deceptive statements on www.vibramfivefingers.com are as follows:

Discover the Alternative®:

Like all things in life, there is a balance, and Vibram FiveFingers® offers an alternative to traditional footwear. Wearing FiveFingers for fitness training, running, or just for fun will make your feet stronger and healthier—naturally.¹²

33. Defendants also explicitly and deceptively claim there is scientific support for their “health benefit” claims. For example, Defendants state on their website:

The benefits of running barefoot have long been supported by scientific research. And there is ample evidence that training without shoes allows you to run faster and farther with fewer injuries.

No footwear comes closer to recreating this natural sensation than Vibram FiveFingers®. It allows you to land on your forefoot, directly below your center of gravity, resulting in optimum balance, increased stability, less impact and greater propulsion. Running in FiveFingers delivers sensory feedback that improves agility and equilibrium and allows immediate form correction. In addition it stimulates and strengthens muscles in the feet and lower legs.

In FiveFingers, you get all the health benefits of barefoot running combined with our patented Vibram® sole that protects you from elements and obstacles in your path.¹³

34. Likewise, CEO Tony Post also falsely promotes and advertises that FiveFingers’ purported “health benefits” are supported by research. Mr. Post has stated that the “strong commitment to research and innovation, along with passionate consumer feedback, inspired our new educational section on the Vibram

¹² Vibram, <http://www.vibramfivefingers.com/barefoot-sports/> (last visited Mar. 9, 2012).

¹³ Vibram, *supra* note 5.

1 website[]” and referred to the “the vital health benefits in utilizing a minimalist
2 fitness routine.”¹⁴

3 35. Defendants’ marketing deceptively includes the endorsement of
4 doctors, including podiatrists, to give credence to their claims that there is
5 scientific support for Defendants’ uniform “health benefit” claims. For example, at
6 www.vibramfivefingers.com, Defendants included a testimonial by Dr. Ivo
7 Waerlop of the Vibram “Biomechanics Advisory Board” who stated that
8 ““Running in FiveFingers improves agility, strength, and equilibrium, plus it
9 delivers sensory feedback that allows runners to make immediate corrections in
10 their form. This greatly improves running efficiency.””¹⁵ On the current version of
11 www.vibramfivefingers.com, Dr. Nick Campitelli, who is on the Vibram
12 “Biomedical Advisory Board” and is purportedly a board certified podiatrist states:
13 ““After 10 years of foot pain while running, I began researching the biomechanics
14 of barefoot running and the use of minimalist shoes. I immediately started running
15 in FiveFingers and have been pain free since. I now incorporate my research into
16 my medical practice. It is truly amazing to witness the consistent positive results
17 with my clients.””¹⁶

18 36. Regardless of the medium used, Defendants’ advertisements and
19 marketing for FiveFingers convey to consumers that by wearing FiveFingers,
20 consumers will reap significant “health benefits,” more so than through wearing
21 conventional shoes. These purported “health benefits” include but are not limited
22 to:

23 ¹⁴ *Vibram FiveFingers: Minimalist Footwear Company, Vibram FiveFingers*
24 *Debuts New Educational Resources*, India Retail News, Feb. 8, 2012.

25 ¹⁵ Way Back Machine, [http://web.archive.org/web/20100722095020/](http://web.archive.org/web/20100722095020/http://www.vibramfivefingers.com/barefooting/barefoot_running.cfm)
26 http://www.vibramfivefingers.com/barefooting/barefoot_running.cfm (last visited
Mar. 9, 2012).

27 ¹⁶ Vibram,
28 [http://www.vibramfivefingers.com/about_vibram_fivefingers/medical_advisory_b](http://www.vibramfivefingers.com/about_vibram_fivefingers/medical_advisory_board.htm)
oard.htm (last visited June 11, 2012).

- (a) Improved foot health;
- (b) Reduced risk of injury;
- (c) Strengthened muscles in feet and lower legs;
- (d) Stimulated neural function improving balance, agility and range of motion;
- (e) Improved spine alignment;
- (f) Improved posture;
- (g) Reduced lower back pain;¹⁷ and
- (h) Improved proprioception and body awareness.

37. As sellers, manufacturers and designers of FiveFingers, Defendants know or, at the very least, should know of existing literature (some of which is discussed herein) demonstrating that there is no scientific evidence which substantiates or proves that wearing FiveFingers will provide these benefits in any greater degree than with conventional running shoes. Indeed, one website purporting to present research on running that is funded “in part, by Vibram USA ®” states as follows:

Do barefoot runners get injured less? Barefoot runners often adopt forefoot or midfoot strike gaits and have a softer, more gentle landing, which may reduce their risk of injury. *While there are anecdotal reports of barefoot runners being injured less, there is very little scientific evidence to support this hypothesis at this time. Well-controlled studies are needed to determine whether barefoot running results in fewer injuries.*¹⁸

¹⁷ Way Back Machine, <http://web.archive.org/web/20070322215621/http://www.vibramfivefingers.com/health.html> (last visited Mar. 9, 2012).

¹⁸ Running Barefoot: FAQ, <http://barefootrunning.fas.harvard.edu/6FAQ.html> (last visited June 11, 2012) (emphasis added).

1 38. Defendants' statements set forth above and others like them made by
2 Defendants demonstrate Defendants' intention to deceptively persuade consumers
3 to purchase FiveFingers to gain certain health benefits, despite the fact that the
4 purported health benefits from wearing FiveFingers are false, and not substantiated
5 or proven to exist through accepted scientific research, and even though the
6 required physical transition to running in FiveFingers is a long, complicated
7 process that can actually cause, rather than prevent, injury.

8 39. Plaintiff cannot, without discovery, know the details of the bases for
9 Defendants' deceptive claims concerning running in FiveFingers. However, the
10 above-mentioned health benefits claims were not and are not based on well-
11 designed scientific studies subject to traditional scientific scrutiny, including being
12 performed by impartial parties who conducted appropriately powered double-
13 blinded, placebo-controlled studies, which were subjected to peer review or other
14 methods traditionally used by the scientific community to ensure accurate results.

15 **There is No Adequate Support for Defendants' Deceptive Representations**

16 40. As discussed above, Defendants consistently mislead consumers into
17 thinking that there is scientific research proving that wearing FiveFingers provides
18 the purported health benefits--such as improved foot health, reduced risk of injury,
19 strengthened muscles in feet and lower legs, improved range of motion in ankles
20 and feet, spine alignment, improved posture, reduced lower back pain, and
21 improved proprioception--that wearing conventional running shoes does not
22 provide.

23 41. However, as illustrated below, Defendants' health-benefit
24 representations are false and deceptive, and there is no adequate scientific proof
25 supporting Defendants' representations.

26 42. As the American Podiatric Medical Association's position on barefoot
27 running indicates, Defendants' many deceptive statements about the purported
28

1 “health benefits” of FiveFingers are false and deceptive and not supported by
 2 reliable scientific research or clinical proof. That position is as follows:

3 While anecdotal evidence and testimonials proliferate on the Internet
 4 and in the media about the possible health benefits of barefoot
 5 running, research has not yet adequately shed light on the immediate
 6 and long term effects of this practice.

7 Barefoot running has been touted as improving strength and balance,
 8 while promoting a more natural running style. However, risks of
 9 barefoot running include a lack of protection--which may lead to
 10 injuries such as puncture wounds--and increased stress on the lower
 11 extremities. *Research is ongoing in regards to the risk and benefits of*
 12 *barefoot running.*¹⁹

13 43. As one article in the May/June 2011 Journal of the American
 14 Podiatric Medical Association (“APMA Article”) states, “professional
 15 organizations and many clinicians with a keen interest in foot health and podiatric
 16 sports medicine are becoming more aware of the purported claims and risks but are
 17 going to be reluctant to support or oppose barefoot running until more definitive
 18 research and evidence are available.”²⁰

19 44. Another example demonstrating the lack of scientific research on
 20 minimalist shoes is illustrated through the U.S. Army. The U.S. Army plans to
 21 study the effectiveness of the shoes. The reason is that the effectiveness of
 22 minimalist shoes is scientifically unproven.²¹ As Lt. Col. Timothy Pendergrass
 23 stated, “[w]hat we do know is we don’t know a whole lot, and we need more

24 ¹⁹ APMA Position Statement on Barefoot Running, *supra* note 1 (emphasis added).

25 ²⁰ David W. Jenkins, DPM & David J. Cauthon, RPh, *Barefoot Running Claims*
 26 *and Controversies*, Journal of the American Podiatric Medical Association,
 May/June 2011, 231, 243.

27 ²¹ Joe Gould, *Army Seeks More Input on Minimalist Shoes*, Army Times, Feb. 13,
 28 2012, 23.

research.”²² Lt. Col. Pendergrass also stated that “[t]here’s a lot that’s stated out there without any research out there to back it up, so we’re trying to look at the kinds of research we can do to answer those questions.”²³

45. Another recent article, published by the American Academy of Physical Medicine and Rehabilitation—stating that “it should be obvious that foot intrinsic muscle strengthening cannot be a potential benefit from barefoot running”—indicates that Defendants’ muscle-strengthening claim is false.²⁴ That article also states that “other aspects of muscle function might be improved by barefoot running, but this remains to be examined.” That article therefore demonstrates that Defendants’ muscle-strengthening claims are unsubstantiated.

46. As for Defendants’ deceptive statements about the reduced injury risk, the APMA Article notes that although there are studies demonstrating reduced injury factors in laboratory situations, “[n]o evidence was found that demonstrates a reduced prevalence of running injuries in barefoot runners.”²⁵ Another recent article published in Foot & Ankle International in April 2012 states:

Despite booming sales in minimalist footwear, there is no evidence that their use has decreased the incidence of injuries in runners. Since the introduction of these shoes, we have treated a series of experienced runners that have made the transition from traditional footwear to minimalist footwear and sustained an injury either during or shortly after their transition. All of the runners were uninjured in

²² *Id.*

²³ *Id.*

²⁴ See Brian J. Krabak, M.D., M.B.A., *et. al.*, *Barefoot Running*, PM&R, Vol. 3, Dec. 2011, at 1148-49.

²⁵ Jenkins, *et. al.*, *supra* note 20, *Barefoot Running Claims and Controversies*, at 235 (emphasis added).

1 the year prior to their transition and all developed an injury within a
 2 year of the transition.²⁶

3 47. Furthermore, the APMA Article notes that “[m]ost of the claims
 4 regarding the reduction of running-related injuries in barefoot runners are made on
 5 the basis of logical assumptions However, no studies or even surveys have
 6 sustained these claims. Although there are numerous studies that demonstrate
 7 reduced lateral ankle instability in the barefoot condition, they do not look at
 8 barefoot runners.”²⁷ Indeed, “[e]vidence that barefoot running directly prevents or
 9 improves running-related injuries is nonexistent.”²⁸ Also, Amby Burfoot, editor-
 10 at-large for Runner’s World, magazine wrote of another study, “[n]o one has ever
 11 proven that any running shoes prevent running injuries, and no one has ever proven
 12 that barefoot running prevents running injuries.”²⁹

13 48. Even research that is sponsored “in part, by Vibram USA®,”
 14 demonstrates how Defendants’ statements about reduced injury risk are deceptive.
 15 *See supra* ¶ 37. And those performing the research, such as Daniel E. Lieberman,
 16 sponsored “in part, by Vibram USA®,” and others, acknowledge that “[a]lthough
 17 there are anecdotal reports of reduced injuries in barefoot populations, controlled
 18 prospective studies are needed to test the hypothesis that individuals who do not
 19 predominantly [rear-foot strike] either barefoot or in minimal footwear, as the foot
 20 apparently evolved to do, have reduced injury rates.”³⁰ Lieberman also

21 ²⁶ Matthew J. Salzlter, MD, *et al.*, *Injuries Observed in Minimalist Runners*, Foot &
 22 Ankle International, Vol. 33, No. 4, April 2012, at 263.

23 ²⁷ *Id.* at 240 (citations omitted).

24 ²⁸ *Id.* at 242.

25 ²⁹ Emily Main, *Give Up Running Shoes? Not So Fast*, Rodale (Jan. 12, 2010),
 26 available at <http://www.rodale.com/knee-pain-while-running?page=0%2C1> (last
 visited Mar. 9, 2012).

27 ³⁰ Daniel E. Lieberman, Ph.D., *et. al.*, *Foot Strife Patterns and Collision Forces in*
 28 *Habitually Barefoot Versus Shod Runners*, Nature, Jan. 28, 2010, at 534 (citation
 omitted).

acknowledges that “[i]t is remarkable how little we know about something so basic and fundamental as barefoot running, and it should be evident that we need to roll up our shirt sleeves and take off our shoes to answer a wide range of questions about how the bare foot functions during running and the relevance of barefoot running to injury.”³¹

49. An article by Benno M. Nigg of the Department of Kinesiology at the University of Calgary also indicates that there is no “publication that provides hard evidence that people running barefoot have fewer running related injuries than people running with running shoes.” Benno Nigg, *Biomechanical Considerations on Barefoot Movement and Barefoot Shoe Concepts*, Footwear Science, June 2009, at 76 (“Nigg Article”). The Nigg Article states:

The current claim that people running barefoot have less running related injuries than people running in shoes is a speculation with no epidemiological support. *We suggest that nobody knows at this point in time whether or not people running barefoot have more or less injuries than people running with conventional running shoes.*³²

50. Another recently published article from the May/June 2012 Current Sports Medicine Reports states:

To date, no clinical studies have been published to substantiate the claims of injury reduction using a “minimalist” style. Opponents of “barefoot” running maintain that the “minimalist” style may alter the type, not incidence, of running injuries. By increasing impact forces on the forefoot and mid foot, “minimalist” runners may be subjected

³¹ Daniel E. Lieberman, Ph.D., *What We Can Learn About Running from Barefoot Running: An Evolutionary Medical Perspective*, Exercise and Sport Sciences Reviews, April 2012, at 70-71, available at http://journals.lww.com/acsm-essr/Fulltext/2012/04000/What_We_Can_Learn_About_Running_from_Barefoot.3.aspx.

³² Nigg Article at 76 (emphasis added).

1 to increase rates of forefoot and midfoot injuries and plantar skin
2 breakdown compared with shod runners.³³

3 51. As Craig Payne, a senior lecturer in the department of podiatry at La
4 Trobe University in Melbourne, Australia writes: "The barefoot running
5 community have an appalling track record at how they misinterpret, misuse and
6 misquote research The simple facts are that not one risk factor study on
7 running injuries has linked high impacts to running injuries, yet the barefoot
8 running community claim that the evidence shows this and consider high impacts
9 as the cause of all injuries."³⁴

10 52. Defendants' health benefit claim that running in FiveFingers leads to
11 fewer injuries is belied by the fact that until runners are able to change the way
12 they run in FiveFingers (if they are able to change at all), they are *more prone* to
13 injuries while running in FiveFingers than with conventional shoes. Nevertheless,
14 even if FiveFingers consumers are able to change the way they run in order to
15 minimize the potential that wearing FiveFingers will injure them, wearing
16 FiveFingers still do not provide the advertised health benefits.

17 53. As the APMA Article illustrates, Defendants' representation that
18 running in FiveFingers increases strength in feet and lower legs also does not have
19 sufficient support. The APMA Article states that "[e]vidence is conflicting on the
20 actual strengthening potential of the barefoot condition, and even if the barefoot
21 condition led to increased muscular strength, the claim that this results in reduced
22 injuries or improved performance has not been proved scientifically." APMA
23 Article at 240.

24
25 ³³ Jeffery A. Rixe, BA, *et. al.*, *The Barefoot Debate: Can Minimalist Shoes Reduce*
26 *Running-Related Injuries?*, Current Sports Medicine Reports, Vol. 11, No. 3,
May/June 2012, at 162.

27 ³⁴ Roger Collier, *The Rise of Barefoot Running*, Canadian Medical Association
28 Journal, Jan. 11, 2011, at E38, *available at* <http://www.cmaj.ca/content/183/1/E37>.

1 54. Moreover, the authors of the APMA Article noted they were unaware
 2 of any study that evaluated “barefoot runners’ proprioceptive ability.” In fact, as
 3 the APMA Article states, “[t]here is even the consideration that in an unshod
 4 condition, proprioceptive elements (plantar mechanoreceptors) may be dampened
 5 through chronic impact loading . . . [and that] [a]lthough numerous studies support
 6 the claimed advantages of the barefoot condition, such as reduced ground reaction
 7 force at impact and improved sensory feedback and proprioception, there is no
 8 evidence that these changes result in reduced injuries or improved performance in
 9 barefoot runners. It seems that these claims are extrapolated or speculative.” *Id.* at
 10 240, 242. Thus, Defendants’ uniform deceptive and misleading statement that
 11 wearing FiveFingers improves proprioception has no reliable scientific support,
 12 and is false and deceptive.

13 55. Finally, Defendants’ comparison of running in FiveFingers to barefoot
 14 running is itself misleading. Indeed, the ACE Study found that “compared with
 15 barefoot runners, shod runners and those in Vibrams showed more pronation,
 16 which is the natural side-to-side movement of the foot during running. Excessive
 17 pronation is associated with more injuries.”³⁵ The Nigg Article further
 18 demonstrates why comparing barefoot running and running in FiveFingers is
 19 deceptive. The Nigg Article states as follows:

20 The name “barefoot shoes” is a contradiction in terms. A shoe
 21 condition is not a barefoot condition. The discussed “barefoot shoes”
 22 typically take one aspect of barefoot and implement it into a shoe.
 23 Some of these aspects are close to barefoot, some need a little stretch.
 24 To assume that these shoes correspond to barefoot running or moving

25
 26
 27 ³⁵ Tara Parker-Pope, *Are Barefoot Shoes Really Better?*, N.Y. Times, Sept. 30,
 28 2011, available at <http://well.blogs.nytimes.com/2011/09/30/are-barefoot-shoes-really-better/> (last visited Mar. 9, 2012).

1 is not appropriate and the name "barefoot shoes" may well be more a
2 marketing strategy than a functional name.³⁶

3 56. Defendants have reaped millions of dollars in profits by leading
4 consumers to believe that there is reliable scientific data backing up their claims
5 that wearing FiveFingers, *inter alia*, strengthen muscles and reduce the risk of
6 injury. Reasonable consumers would not have paid the amounts charged for
7 FiveFingers, or would not have purchased FiveFingers at all, had they known the
8 truth about FiveFingers: that there is no scientific evidence supporting Defendants'
9 major health benefit claims.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 57. Plaintiff brings this class action pursuant to Federal Rule of Civil
12 Procedure 23 on behalf of himself and a Class of all others similarly situated
13 consisting of all persons in California who purchased FiveFingers running shoes
14 from the time they were first sold in California until notice is disseminated to the
15 Class. Excluded from the Class are Defendants and their officers, directors, and
16 employees, those who purchased FiveFingers for the purpose of resale, and those
17 persons pursuing claims for personal injuries.

18 58. *Numerosity*. The members of the Class are so numerous that joinder
19 of all members would be impracticable. Plaintiff is informed and believes, and on
20 that basis alleges, that the Class contains thousands of members. The precise
21 number of Class members is unknown to Plaintiff. The true number of Class
22 members is known by Defendants, however, and thus potential Class members
23 may be notified of the pendency of this action by first class mail, electronic mail,
24 and/or published notice.

25 59. *Existence and Predominance of Common Questions of Law and*
26 *Fact*. Common questions of law and fact exist as to all members of the Class and
27

28 ³⁶ Nigg Article at 78.

1 predominate over any questions affecting only individual Class members. These
 2 common legal and factual questions include, but are not limited to, the following:

3 (a) Whether Defendants had adequate substantiation for their
 4 representations prior to making them;

5 (b) Whether the representations discussed above are true, or are
 6 misleading, or reasonably likely to deceive;

7 (c) Whether Defendants' alleged conduct violates public policy;

8 (d) Whether the alleged conduct constitutes violations of the laws
 9 asserted herein;

10 (e) Whether Defendants engaged in false or misleading advertising;

11 (f) Whether Plaintiff and Class members have sustained monetary
 12 loss and the proper measure of that loss; Defendants have been unjustly enriched;
 13 and

14 (g) Whether Plaintiff and the Class are entitled to relief, and the
 15 amount and nature of such relief.

16 60. **Typicality.** The claims of Plaintiff are typical of the claims of the
 17 members of the Class because, *inter alia*, all Class members were injured through
 18 the uniform misconduct described above. Plaintiff is advancing the same claims
 19 and legal theories on behalf of himself and all members of the Class.

20 61. **Adequacy of representation.** Plaintiff will fairly and adequately
 21 protect the interests of the Class. Plaintiff has retained highly competent counsel
 22 and experienced class action attorneys to represent his interests and that of the
 23 Class. Plaintiff and his counsel have the necessary financial resources to
 24 adequately and vigorously litigate this class action. Plaintiff has no adverse or
 25 antagonistic interests to those of the Class. Plaintiff is willing and prepared to
 26 serve the Court and the Class members in a representative capacity with all of the
 27 obligations and duties material thereto and is determined to diligently discharge
 28

1 those duties by vigorously seeking the maximum possible recovery for Class
2 members.

3 62. **Superiority.** A class action is superior to all other available methods
4 for the fair and efficient adjudication of this controversy for the following reasons:

5 (a) It is economically impractical for members of the Class to
6 prosecute individual actions;

7 (b) The Class is readily definable; and

8 (c) Prosecution as a class action will eliminate the possibility of
9 repetitious litigation.

10 63. A class action will cause an orderly and expeditious administration of
11 the claims of the Class. Economies of time, effort, and expense will be fostered
12 and uniformity of decisions will be ensured.

13 64. Plaintiff does not anticipate any undue difficulty in the management
14 of this litigation.

15 65. Plaintiff and the Class expressly exclude any causes of action relating
16 to personal injury or other bodily harm arising from Defendants' conduct.

17 **COUNT I**
18 **Violation of Business & Professions Code §17200, et seq.**

19 66. Plaintiff repeats and realleges the allegations contained in the
20 paragraphs above, as if fully set forth herein.

21 67. Plaintiff brings this claim individually and on behalf of the Class.

22 68. As alleged herein, Plaintiff has suffered injury in fact and lost money
23 or property as a result of Defendants' conduct because he purchased FiveFingers
24 running shoes in reliance on Defendants' claims detailed above, but did not receive
25 a product containing characteristics detailed above.

26 69. The Unfair Competition Law, Business & Professions Code §17200,
27 et seq. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or
28 practice and any false or misleading advertising. In the course of conducting

1 business, Defendants committed unlawful business practices by, *inter alia*, making
2 the representations (which also constitutes advertising within the meaning of
3 §17200) and omissions of material facts, as set forth more fully herein, and
4 violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions
5 Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

6 70. Plaintiff and the Class reserve the right to allege other violations of
7 law which constitute other unlawful business acts or practices. Such conduct is
8 ongoing and continues to this date.

9 71. Defendants' actions also constitute "unfair" business acts or practices
10 because, as alleged above, *inter alia*, Defendants engage in false advertising, which
11 misrepresents and omits material facts regarding FiveFingers. Defendants'
12 business acts or practices therefore offends an established public policy, and
13 engages in immoral, unethical, oppressive, and unscrupulous activities that are
14 substantially injurious to consumers.

15 72. As stated in this Complaint, Plaintiff alleges violations of consumer
16 protection, unfair competition and truth in advertising laws, resulting in harm to
17 consumers. Defendants' acts and omissions also violate and offend the public
18 policy against engaging in false and misleading advertising, unfair competition and
19 deceptive conduct towards consumers. This conduct constitutes violations of the
20 unfair prong of Business & Professions Code §17200, *et seq.*

21 73. There were reasonably available alternatives to further Defendants'
22 legitimate business interests, other than the conduct described herein.

23 74. Business & Professions Code §17200, *et seq.*, also prohibits any
24 "fraudulent business act or practice."

25 75. Defendants' actions, claims, nondisclosures, and misleading
26 statements, as alleged in this Complaint, were false, misleading and likely to
27 deceive the consuming public within the meaning of Business & Professions Code
28 §17200, *et seq.*

76. Plaintiff and other members of the Class have in fact been deceived as a result of their reliance on Defendants' material representations and omissions, which are described above. This reliance has caused harm to Plaintiff and other members of the Class who each purchased Defendants' FiveFingers running shoes. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

77. As a result of their deception, Defendants have been able to reap unjust revenue and profit.

78. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

79. Plaintiff, individually, and on behalf all others similarly situated, and the general public, seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

COUNT II

Violations of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

80. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

81. Plaintiff brings this claim individually and on behalf of the Class.

82. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the "Act"). Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendants' FiveFingers is a good within the meaning of the Act.

83. Defendants violated the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of FiveFingers:

1 (5) Representing that [FiveFingers has] . . . approval, characteristics, .
 2 . . uses [or] benefits . . . which [it does] not have

3 * * *

4 (7) Representing that [FiveFingers is] of a particular standard, quality
 5 or grade . . . if [it is] of another.

6 * * *

7 (9) Advertising goods . . . with intent not to sell them as advertised.

8 * * *

9 (16) Representing that [FiveFingers has] been supplied in accordance
 10 with a previous representation when [it has] not.

11 84. Defendants violated the Act by making representations and
 12 advertisements, which are described above, about FiveFingers, when they knew, or
 13 should have known, that the representations and advertisements were
 14 unsubstantiated, false, and misleading.

15 85. Pursuant to California Civil Code §1782(d), Plaintiff and the Class
 16 seek a Court order enjoining the above-described wrongful acts and practices of
 17 Defendants and for restitution and disgorgement.

18 86. Pursuant to §1780(d) of the Act, attached hereto as Exhibit A is the
 19 affidavit showing that this action has been commenced in the proper forum.

20
 21 **COUNT III**
Breach of Express Warranty

22 87. Plaintiff repeats and realleges the allegations contained in the
 23 paragraphs above, as if fully set forth herein.

24 88. Plaintiff brings this claim individually and on behalf of the Class.

25 89. Plaintiff, and each member of the Class, formed a contract with
 26 Defendants at the time Plaintiff and the other members of the Class purchased
 27 FiveFingers running shoes. The terms of that contract include the promises and
 28 affirmations of fact made by Defendants on their FiveFingers packaging and in-

1 store displays, and through the FiveFingers' marketing campaign, as described
 2 above. This product packaging and advertising constitutes express warranties,
 3 became part of the basis of the bargain, and is part of a standardized contract
 4 between Plaintiff and the members of the Class on the one hand, and Defendants
 5 on the other.

6 90. All conditions precedent to Defendants' liability under this contract
 7 have been performed by Plaintiff and the Class.

8 91. Defendants breached the terms of this contract, including the express
 9 warranties, with Plaintiff and the Class by not providing the FiveFingers as
 10 described above. Such express warranties breached by Defendants include the
 11 representations set forth above.

12 92. As a result of Defendants' breach of their contract, Plaintiff and the
 13 Class have been damaged in the amount of the purchase price of the FiveFingers
 14 they purchased.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff prays for a judgment:

- 17 A. Certifying the Class as requested herein;
- 18 B. Awarding restitution and disgorgement of Defendants' revenues to
- 19 Plaintiff and the proposed Class members;
- 20 C. Awarding injunctive relief as permitted by law or equity, including:
- 21 enjoining Defendants from continuing the unlawful practices as set forth herein,
- 22 and directing Defendants to identify, with Court supervision, victims of their
- 23 conduct and pay them restitution and disgorgement of all monies acquired by
- 24 Defendants by means of any act or practice declared by this Court to be wrongful;
- 25 D. Ordering Defendants to engage in a corrective advertising campaign;
- 26 E. Awarding attorneys' fees and costs;
- 27 F. Awarding pre-judgment and post-judgment interest at the legal rate;
- 28 and

1 G. Providing such further relief as may be just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a trial of his claims by jury to the extent authorized
4 by law.

5 Dated: July 9, 2012

MILBERG LLP


NICOLE M. DUCKETT

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9 Jeff S. Westerman (SBN 94559)
Nicole M. Duckett (SBN 198168)
300 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071
Telephone: 213-617-1200
Facsimile: 213-617-1975
Email: jwesterman@milberg.com
nduckett@milberg.com

10
11
12
13 **MILBERG LLP**
JANINE L. POLLACK
One Pennsylvania Plaza, 49th Floor
New York, New York 10119
Telephone: 212-594-5300
Facsimile: 212-868-1229
Email: jpollack@milberg.com

14
15
16
17 **BLOOD HURST & O'REARDON LLP**
TIMOTHY G. BLOOD
THOMAS J. O'REARDON II
701 B Street, Suite 1700
San Diego, California 92101
Telephone: 619-338-1100
Facsimile: 619-338-1101
Email: tblood@bholaw.com
toreardon@bholaw.com

18
19
20
21
22 **SHEPHERD, FINKELMAN,**
MILLER & SHAH, LLP
JAMES C. SHAH
JAYNE A. GOLDSTEIN
35 East State Street
Media, Pennsylvania 19063
Telephone: 610-891-9880
Facsimile: 610-891-9883
Email: jshah@sfmslaw.com
jgoldstein@sfmslaw.com

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GARY ROBERTS & ASSOCIATES, P.A.
MICHAEL K. BECK
324 Datura Street
Suite 223
West Palm Beach, Florida 33401
Telephone: 561-686-1800
Facsimile: 561-686-1533
Email: Michael@palmbeachtrialattorney.net

THE BREEDEN LAW FIRM
TONY W. BREEDEN
578 Washington Blvd., Suite 552
Marina Del Rey, CA 90292
Telephone: 310-984-6861
Facsimile: 310-984-6849
Email: tony@breedenlawfirm.com

Counsel for Plaintiff Ali Safavi

EXHIBIT A

MILBERG LLP

Jeff S. Westerman (SBN 94559)
E-mail: jwesterman@milberg.com
Nicole M. Duckett (SBN 198168)
E-mail: nduckett@milberg.com
One California Plaza
300 South Grand Ave., Suite 3900
Los Angeles, CA 90071
Telephone: (213) 617-1200
Facsimile: (213) 617-1975

MILBERG LLP

Janine L. Pollack
Email: jpollack@milberg.com
One Pennsylvania Plaza, 49th Floor
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

Counsel for Plaintiff

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALI SAFAVI, on Behalf of Himself, All
Others Similarly Situated and the General
Public,

Plaintiff,

v.

VIBRAM USA INC. and VIBRAM
FIVEFINGERS LLC,

Defendants.

)Case No.:

)CLASS ACTION

)AFFIDAVIT OF NICOLE M.
)DUCKETT PURSUANT TO

)CALIFORNIA CIVIL CODE §1780(d)

)DEMAND FOR JURY TRIAL

1 I, NICOLE M. DUCKETT, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of
3 the State of California.

4 2. I am an attorney at the law firm of Milberg LLP, one of the counsel of
5 record for Plaintiff in the above-entitled action.

6 3. Defendants Vibram USA Inc. and Vibram FiveFingers LLC has done
7 and is doing business in Los Angeles County. Such business includes the
8 marketing and sale of its Vibram FiveFingers. Furthermore, Plaintiff Ali Safavi
9 resides in this District.

10 I declare under penalty of perjury under the laws of the State of California
11 that the foregoing is true and correct. Executed this 9th day of July, 2012, at Los
12 Angeles, California.

13 Dated: July 9, 2012

14
15 
16 _____
17 NICOLE M. DUCKETT
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Ronald S. W. Lew and the assigned discovery Magistrate Judge is Jay C. Gandhi.

The case number on all documents filed with the Court should read as follows:

CV12- 5900 RSWL (JCGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> ALI SAFAVI, on Behalf of Himself, All Others Similarly Situated and the General Public,	DEFENDANTS VIBRAM USA INC. and VIBRAM FIVEFINGERS LLC,
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) JEFF S. WESTERMAN, NICOLE M. DUCKETT MILBERG LLP, 300 S. Grand Ave., #3900, Los Angeles, CA 90071 Tel: (213) 617-1200 Fax: (213) 617-1975	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☐ **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violation of the Unfair Competition Law, Bus. & Prof. Code §17200 et seq; Consumers Legal Remedies Act, Civil Code §1750 et seq.; & Breach of Express Warranty

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV12-5900

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Massachusetts

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** July 9, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))